IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

MONDAY, THE 17TH SEPTEMBER 2007 / 26TH BHADRA 1929

Crl.MC.No. 11482 of 2002()

CC.96/2002 of CHIEF JUDICIAL MAGISTRATE COURT, MANJERI

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PETITIONER:

A.C. JOSEPH, VATTAKUNNEL TEXTILES,
PONKUNNAM, KOTTAYAM.

BY ADV. SRI.V.G.ARUN

RESPONDENTS:

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1. P.P. ABDUL SALIM, PUTHEN PEEDIYEKKAL HOUSE, NELLIPARAMBU, CHERANI, MANJERI.

2. STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. AMJAD ALI
SRI.C.A.CHACKO

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 17/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.R.UDAYABHANU, J

Crl.M.C.No. 11482/2002

Dated this 17th day of September, 2007

O R D E R

The petitioner is the accused in C.C.No.96/2002 in the file of the CJM, Manjeri, who has sought for getting quashed the above proceedings. It is his contention that present proceedings is barred under Section 300 Cr.P.C, as proceedings were initiated earlier against him for the offence under Section 138 of the Negotiable Instruments Act and subsequently during the pendency of the proceedings, the complainant applied under Section 257 and the Court permitted the complainant to withdraw the case with liberty to file a fresh case.

It is the case of the complainant that an application under Section 257 has to end in an order of acquittal and hence there cannot be a fresh trial on the basis of the same facts. The counsel has relied on the decision reported in **Eciyo Coconut Oils Pvt. Ltd., v. State of Kerala (2002 (1) KLT 172),** in which this Court has held that Section 300 Cr.P.C will be applicable when another complaint is filed alleging the commission of the

same offence on the basis of the same set of facts. The above case was with respect to the proceedings initiated by the Inspector of Legal Metrology against the petitioners 1 and 2/accused therein. The above proceedings were withdrawn on application and the accused, petitioners 1 and 2, were acquitted. Thereafter a fresh complaint was filed making the third petitioner also one of the accused for the same offence. It was held that the proceedings against petitioners 1 and 2 will be hit by Section 300 Cr.P.C.

Counsel for the respondent has relied on the decision reported in **A.A.Mulla and Others v. State of Maharashtra and Another (JT 1996 (9) SC 551) : (1997 KHC 178) : (1997 (1) KLT SN 4).** In the matter therein the accused tried and acquitted under Section 409 IPC and Section 5 of the Prevention of Corruption Act. Subsequently the charge sheet was laid for the offence under Section 135(1)(i) of the Customs Act and Section 85 of Gold Control Act. It was held that there is no bar for the second trial as the facts to be established within the seemed proceedings

envisaged a different situation and enquiry for finding out facts constituting offences under the Customs Act and Gold Control Act and that the same is of a different nature. It has held that not only the ingredients of offences in the previous and second trial are different, the factual foundation of first trial and such foundation for the second trial is also not indented; and that the second trial is not barred under the Section 403 Cr.P.C of 1898.

I find that in the instant case also the factual foundation for the offence under Section 138 is entirely different from the one under Section 420 IPC; and hence, I find that in the proceedings initiated under Section 420 IPC afresh, is not barred as the accused was proceeded against earlier under Section 138 of the Negotiable Instruments Act.

In such circumstances, Cr.M.C is dismissed.

K.R.UDAYABHANU
JUDGE

mrcs